

Appl. No. 09/785,215

**REMARKS****1. Withdrawn Objections and/or Rejections**

It is noted with appreciation that the Examiner has withdrawn all of the prior rejections under 35 USC §112, so that the only remaining rejections relate to prior art issues.

**2. Double Patenting Rejection**

The claims have been rejected for obviousness-type double patenting over claims 1-22 of co-pending application no. 10/204,362, and for obviousness-type double patenting claims 1-21 of co-pending application no. 10/223,809. Applicants wish to defer action on these objections until such time as the claims are indicated as being allowable in the present application, particularly since the rejections are "provisional" obviousness-type double patenting rejections.

**3. Rejections Under 35 USC 102(e)****3.1 Rejections Over U.S. Patent 6,787,637 (7 September 2004) to Schenk**

Previous claims have been rejected under 35 USC 102(e) as being anticipated by Schenk '637. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

Applicants first of all submit that Schenk '637 is not properly prior art to the present application, or at least significant portions of Schenk '637 are not prior art to the present application. The Examiner will note that the Schenk '637 patent granted from an application which itself was a continuation-in-part of prior application serial no. 09/322,289 which was filed on May 28, 1999. Thus, only subject matter in the Schenk patent which is common to both the continuation application and the parent application could be prior art to the present application as of May 28, 1999. Material added into the Schenk et al. application upon the filing of the continuation-in-part application on May 26, 2000 would not be prior art to the present application because that date is after the priority date of the present application based upon Danish priority application PA 2000 00265 and the priority provisional application 60/186,295 filed on March 1, 2000.

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An understanding of the common disclosed material in the two Schenk applications can be gleaned from a comparison of the disclosure in the Schenk '637 patent (which issued from the continuation-in-part application) as compared to the disclosure of the initial application 09/322,289 filed on May 28, 1999. Comparison of these two texts reveals that the subject matter added into the continuation-in-part application corresponds to substantially all of the disclosure in the section of the Schenk '637 patent entitled "XVIII. Prevention and Treatment of Human Subjects", that is the subject matter beginning at column 69 through to the end of the sequence listing.

Applicants submit that the Examiner, therefore, has not properly analyzed the true disclosure of the Schenk patent which is prior art to the present application. The rejection should for this reason alone be withdrawn.

But in addition, the Examiner's comments in the Office Action seem to focus on disclosures in the Schenk '637 patent relating to administering immunogenic A $\beta$  fragment "conjugated to" a T-helper cell and/or B-cell epitope. Applicants have amended the claims of the present application (particularly independent claims 1 and 76) to delete reference to coupling to a polyhydroxypolymer carrier backbone. Applicants submit that these amendments clearly distinguish the present invention from Schenk '637. The present invention is specifically directed to introduction of isolated foreign T-helper epitopes into the A $\beta$  or APP sequence, and this is not anywhere taught or suggested by Schenk.

Accordingly, reconsideration and withdrawal of the rejections are requested.

### **3.2 Rejections over U.S. Patent Application Publication 2002/0077288 A1 to Frangione et al.**

Claims 1, 10, 27, 28, 33, 59, 60, 65, 70, 71, 73, 74 and 76 have been rejected under 35 USC 102 (e) over Frangione et al. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

Although the Examiner has rejected the claims over the Frangione et al. patent publication and 35 USC 102(e) Applicants submit that the reference is not properly prior art to the present application. The face of the Frangione patent publication indicates that the application is a "non-provisional application of an earlier provisional application filed on April

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26, 1996. But the publication is not truly entitled to a 102(e) date of April 26, 1996. To be entitled to the 1996 priority date, the conversion or non-provisional application would have to have been filed on April 26, 1997, that is, one year after the April 26, 1996 provisional filing date. But it is clear that no conversion or non-provisional application was made within the one year time period. This can be seen from the ultimately granted U.S. Patent 6,713,450 B2 patent to Frangione et al. which granted on March 30, 2004, indicated a filing date of May 22, 2001, and noted that a provisional no. 60/205,578 was filed on May 22, 2000. It is, therefore, readily apparent that Frangione initially filed a provisional application on April 26, 1996, failed to convert the application within the one year date, subsequently filed another provisional application on May 22, 2000, and ultimately converted that application on May 22, 2001. As a result, the Frangione, published application 2002/0077288 A1 is only entitled to a prior art date under 35 USC 102(e) of May 22, 2000. That date, however, is again after the earlier priority dates for the present application, so the Frangione patent application publication is not prior art to the present application.

Accordingly, reconsideration and withdrawal of the rejection are requested.

In view of the above amendments and remarks, Applicants submit that all of the Examiner's rejections have been addressed and overcome, so that the claims now define patentable subject matter. Therefore, reconsideration and withdrawal of all of the rejections, and early allowance of all the claims are requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Leonard R. Svensson (Reg. No. 30,330) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

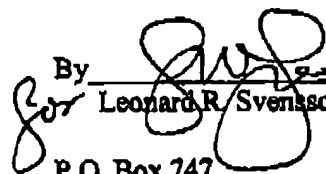
Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), the Applicant respectfully petitions for a two (2) month extension of time for filing a response in connection with the present application and the required fee of \$450.00 should be charged to Deposit Account No. 02-2448.

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If necessary, the Commissioner is hereby authorized in this, concurrent, and future replicas, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By  #47,604  
for Leonard R. Svensson, #30,330

P.O. Box 747  
Falls Church, VA 22040-0747  
(714) 708-8555

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Attachment(s)